TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. [redacted] 20.

THE MERCHANTS NATIONAL BANK OF BALTIMORE, APPELLANT,

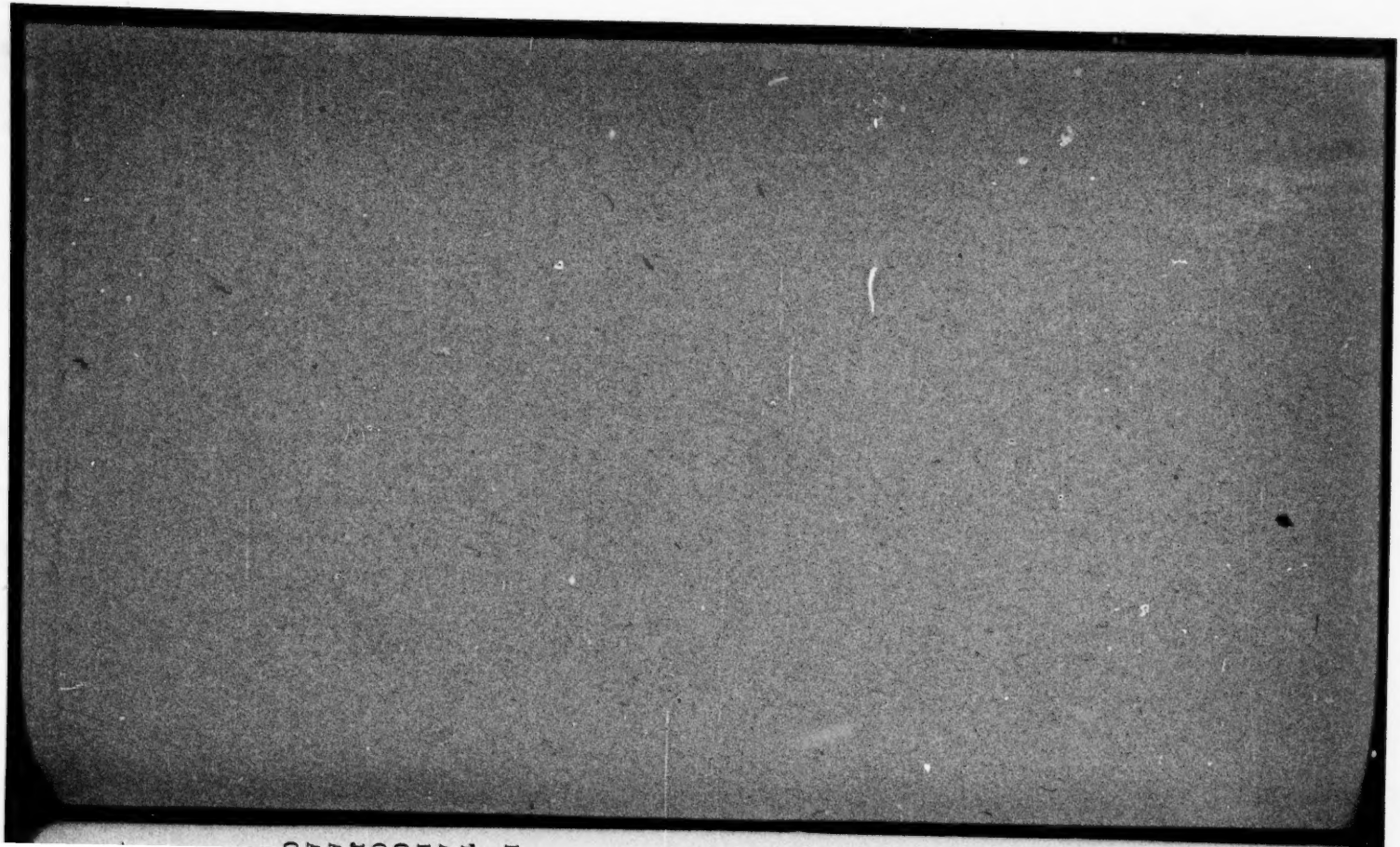
vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED FEBRUARY 14, 1907.

(20,572.)



(20,572.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

No. 607.

THE MERCHANTS NATIONAL BANK OF BALTIMORE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 21, 1907.

1 I.—*Petition. Filed June* 29, 1905.

In the Court of Claims of the United States.

No. 28121.

THE MERCHANTS NATIONAL BANK OF BALTIMORE, Claimant,
vs.
THE UNITED STATES OF AMERICA.

Petition Filed June 29, 1905.

To the Honorable the Chief Justice and the Judges of the Court of Claims:

The Claimant respectfully shows:

1. The claimant was incorporated by the General Assembly of the State of Maryland by the Act of 1834, Chapter 210, under the name of the Merchants Bank of Baltimore, and, under the provisions of "The National Bank Act," was duly converted into a National Banking Association on June 7, 1865, with a capital stock of $1,500,000; and its corporate existence was extended for a period of twenty years from June 7, 1885, in accordance with the provisions of the Act of Congress of July 12, 1882, 22 Stat. at L. 162; and the corporate existence of the claimant was again extended for another term of twenty years from June 7, 1905, in accordance with the provisions of the Act of Congress of April 12, 1902, 32 Stat. at L. 102.

2 2. For divers semi-annual periods, beginning with the six months period preceding January 1, 1888, and including the six months period preceding July 1, 1904, the claimant has paid to the United States, in excess of the amount lawfully due, various sums of money as a duty or tax assessed by the Treasurer of the United States on the average amount of its notes in circulation. The periods when duties or taxes were paid, the amounts of duties or taxes paid, the amounts of duties or taxes due and the amounts of duties or taxes paid in excess, as aforesaid, are fully set forth in the statement marked "Exhibit A," which is attached hereto and made a part of this petition. The aggregate amount of duties or taxes so paid by the claimant in excess is the sum of $4,713.01, as more fully appears in the above mentioned exhibit.

3. The claimant, on the 17th day of November, 1904, did state an account and make application in accordance with the provisions of Section 5218 of the Revised Statutes of the United States to the Treasurer of the United States requesting a refund of the duties or taxes paid in excess, as above set forth, but the United States has failed and refused so to reimburse the claimant, and the said sum of $4,713.01 has not been paid, or any part thereof.

4. The claimant has always borne true allegiance to the Government of the United States, and has not in any way aided, abetted or given encouragement to those engaged in rebellion against it. The claimant is the owner of the claim above set forth, in its own right, and no assignment or transfer of the same or any part or interest therein has been made. The claimant, by reason of the premises, is entitled to recover from the United States the sum of
$4,713.01, over and above all set-offs and just grounds of
3 defense.

Wherefore the claimant prays for judgment against the United States in the sum of $4,713.01, and for such other and further relief as this Honorable Court may be entitled to grant, both at law and in equity, in the premises.

MERCHANTS NATIONAL BANK OF BALTIMORE,
By DOUGLAS H. THOMAS, *President.*

McCAMMON & HAYDEN,
Attorneys for Claimant.
ORMSBY McCAMMON,
J. HANSON THOMAS,
Of Counsel.

STATE OF MARYLAND, *City of Baltimore, To wit:*

Douglas H. Thomas, being duly sworn, deposes and says that he is the President of the Merchants National Bank of Baltimore, the claimant named in and which subscribed the foregoing petition; that he has read the same and knows the contents thereof, and that the facts therein stated are true, to the best of his knowledge and belief.

Sworn to and subscribed before me the 19th day of June, 1905.

FELIX R. SULLIVAN,
Notary Public.

4 EXHIBIT A.

	Amount paid as taxes.	On average circulation of—	True average.	Correct amount of taxes.	Amount of taxes paid in excess.
Jan., 1888	$661.55	$132,310	$117,400	$587.00	$74.55
July, 1888	225.00	45,000			225.00
Jan., 1889	225.00	45,000			225.00
July, 1889	225.00	45,000			225.00
Jan., 1890	225.00	45,000			225.00
July, 1890	225 00	45,000			225.00
Jan., 1891	253.50	50,700			253.50
July, 1891	308.50	61,700			308.50
Jan., 1892	602.66	120,532	109,000	545.00	57.66
July, 1894	283.00	56,600	14,800	74.00	209.00
Jan., 1895	225.00	45,000			225.00
July, 1895	225.00	45,000			225.00
Jan., 1896	225 00	45,000			225.00
July, 1896	225.00	45,000			225.00
Jan., 1897	225.00	45,000			225.00
July, 1897	225.00	45,000			225.00
Jan., 1898	225.00	45,000			225.00
July, 1898	225.00	45,000			225.00
Jan., 1899	292.00	58,400	12,300	61.50	230.50
Jan., 1902	485.57	194,228	165,310	413.27	72.30
July, 1902	125.00	50,000			125.00
Jan., 1903	315.00	126,000	97,826	244.56	70.44
July, 1903	332.35	132,940	78,315	195.79	136.56
Jan., 1904	125.00	50,000			125.00
July, 1904	125.00	50,000			125.00
	$6,834.13			$2,121.12	$4,713.01

5 II.—*Traverse. Filed Oct.* 24, 1906.

In the Court of Claims of the United States, December Term, A. D. 1906.

No. 28121.

THE MERCHANTS NATIONAL BANK OF BALTIMORE
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

J. A. VAN ORSDEL,
Assistant Attorney General.

6 III.—*Argument and Submission.*

On the 24th day of October, 1906, this case was argued by Mr. J. Hanson Thomas and Mr. Arthur G. Brown for the claimant, and by Mr. Philip M. Ashford for the defendants and submitted.

7 IV.—*Findings of Fact and Conclusion of Law and Opinion of the Court.*

Court of Claims of the United States.

No. 28121.

(Decided December 3, 1906.)

MERCHANTS' NATIONAL BANK OF BALTIMORE
v.
THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimant was incorporated by the general assembly of the State of Maryland by the act of 1834, chapter 210, under the name of the Merchants' Bank of Baltimore; and on June 7 1865, was duly converted under the provisions of "the national bank act" into a national banking association, with a capital stock of $1,500,000; and its corporate existence was extended for a period of twenty years from June 7, 1885, in accordance with the provisions of the act of Congress of July 12, 1882 (22 Stat. L., 162); and the corporate existence of the claimant was again extended for another term of twenty years from June 7, 1905, in accordance with the provisions of the act of Congress of April 12, 1902 (32 Stat. L., 102).

II.

The claimant has always had, ever since its organization, and now has, a chartered or declared capital of $1,500,000.

III.

From the organization of the claimant under the national-bank act until the 1st day of July, 1887, it always had circulating notes outstanding in excess of $75,000.

8 IV.

On the 1st day of July, 1887, the claimant had outstanding in circulating notes the sum of $180,000, and the outstanding circulation varied from that date in the following manner:

1887.	July 1 to October 28	$180,000
	October 29 to December 31	45,000
1888.	January 1 to June 30	45,000
	July 1 to December 31	45,000
1889.	January 1 to June 30	45,000
	July 1 to December 31	45,000
1890.	January 1 to June 30	45,000
	July 1 to December 31	50,700
1891.	January 1 to June 30	61,700
	July 1 to July 21	56,900
	July 22 to August 4	55,400
	August 5 to August 18	130,100
	August 19 to August 21	124,400
	August 22 to August 28	128,900
	August 29 to September 1	130,100
	September 2 to September 25	135,000
	September 26 to October 23	133,300
	October 24 to October 27	125,070
	October 28 to November 17	132,450
	November 18 to November 20	127,800
	November 21 to December 13	130,800
	December 14 to December 15	128,090
	December 16 to December 22	156,150
	December 23 to December 27	168,150
	December 28 to December 31	180,000

V.

From January 1, 1892, to January 1, 1894, the outstanding circulation of the claimant always exceeded $75,000, or 5 per cent. of its chartered capital.

VI.

On January 1, 1894, the claimant had an outstanding circulation of $313,000, and the same varied from that date in the following manner:

1894.	January 1 to January 5	$313,000
	January 6 to January 11	223,000
	January 12 to June 30	45,000
	July 1 to December 31	45,000
1895.	January 1 to June 30	45,000
	July 1 to December 31	45,000
1896.	January 1 to June 30	45,000
	July 1 to December 31	45,000
1897.	January 1 to June 30	45,000
	November 3 to December 5	72,000
	December 6 to December 12	70,000
	December 13 to December 18	82,000
	December 19 to December 21	121,270
	December 22 to December 31	141,270

VII.

From January 1, 1899, to July 1, 1900, the outstanding circulation of the claimant always exceeded $75,000, or 5 per cent. of its chartered capital.

9 VIII.

On July 1, 1901, the claimant had an outstanding circulation of $510,300, and the same varied from that date in the following manner:

1901.	July 1 to July 7	$510,300
	July 8 to July 18	506,300
	July 19 to July 21	497,300
	July 22 to July 24	514,000
	July 25 to July 28	527,000
	July 29 to August 6	522,100
	August 7 to August 15	517,000
	August 16 to August 18	317,000
	August 19 to August 26	321,900
	August 27 to September 5	327,000
	September 6 to December 31	50,000
1902.	January 1 to June 30	50,000
	July 1 to October 12	50,000
	October 13 to December 31	225,000
1903.	January 1 to March 4	225,000
	March 5 to June 30	50,000
	July 1 to December 31	50,000
1904.	January 1 to June 30	50,000

IX.

The claimant paid to the Treasurer of the United States during the named months the following sums of money as duty on its outstanding circulation, and the average outstanding circulation on which duties were based were as follows:

January, 1888	$661.55	$132,310
July, 1888	225.00	45,000
January, 1889	225.00	45,000
July, 1889	225.00	45,000
January, 1890	225.00	45,000
July, 1890	225.00	45,000
January, 1891	253.50	50,700
July, 1891	308.50	61,700
January, 1892	602.66	120,532
July, 1894	283.00	56,600
January, 1895	225.00	45,000
July, 1895	225.00	45,000
January, 1896	225.00	45,000
July, 1896	225.00	45,000
January, 1897	225.00	45,000
July, 1897	225.00	45,000

January, 1898	225.00	45,000
July, 1898	225.00	45,000
January, 1899	292.00	58,400
January, 1902	485.57	194,228
July, 1902	125.00	50,000
January, 1903	315.00	126,000
July, 1903	332.35	132,940
January, 1904	125.00	50,000
July, 1904	125.00	50,000

X.

The sums of money paid and the months of payment are as follows:

January, 1888	$74.55	July, 1896	225.00
July, 1888	225.00	January, 1897	225.00
January, 1889	225.00	July, 1897	225.00
July, 1889	225.00	January, 1898	225.00
January, 1890	225.00	July, 1898	225.00
July, 1890	225.00	January, 1899	230.50
January, 1891	253.50	January, 1902	72.30
July, 1891	308.50	July, 1902	125.00
January, 1892	57.66	January, 1903	70.44
July, 1894	209.00	July, 1903	136.56
January, 1895	225.00	January, 1904	125.00
July, 1895	225.00	July, 1904	125.00
10			
January, 1896	$225.00	Total	4,713.01

XI.

The claimant, on the 17th of November, 1904, did state an account and make application to the Treasurer of the United States requesting a refund of the duties or taxes paid in excess, as above set forth, amounting in all to $4,713.01, and the said request was refused by the Treasurer of the United States in a letter to the claimant dated the 11th day of March, 1905.

Conclusion of Law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is not entitled to recover, and its petition is therefore dismissed.

Opinion.

BOOTH, J., delivered the opinion of the court:

This suit is brought to recover duties paid by the claimant alleged to be in excess of the amount lawfully due on its average circulation during certain semiannual periods between July, 1887, and July, 1904, as more fully appears in the findings.

The taxes here in controversy were collected by the Treasurer of the United States by virtue of section 5214 of the Revised Statutes:

"In lieu of all existing taxes, every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one-half of one per centum each half year upon the average amount of its notes in circulation."

The claim is predicated upon Revised Statutes, section 3411:

"Whenever the outstanding circulation of any bank, association, corporation, company, or person is reduced to an amount not exceeding five per centum of the chartered or declared capital existing at the time the same was issued, said circulation shall be free from taxation."

Claimant contends that section 3417 of the Revised Statutes effectuates section 3411 (*supra*) as a limitation upon the exaction of duty under section 5214, Revised Statutes (*supra*), so that when the average amount of its circulation was not in excess of 5 per cent. of its capital it was exempt from payment of the same.

Section 3417 is as follows:

"The provisions of this chapter, relating to the tax on the deposits, capital, and circulation of banks, and to their returns, except as contained in sections thirty-four hundred and ten, thirty-four hundred and eleven, thirty-four hundred and twelve (thirty-four hundred and thirteen), and thirty-four hundred and sixteen,
11 and such parts of sections thirty-four hundred and fourteen, and thirty-four hundred and fifteen as relate to the tax of ten per centum on certain notes, shall not apply to associations which are taxed under and by virtue of title 'National banks.'"

The statutes here in controversy were originally enacted at a time when the Congress had under special consideration the provision of a uniform and stable currency. It is deemed unnecessary to advert in detail to the historical incidents of the times leading up to and culminating in the passage of the act of February 25, 1863, known as the national banking act. No tax of any character upon the circulation of a bank had been imposed until the act of February 25, 1863. This statute did not, however, impose any tax upon the circulation of State banks. It provided in terms and under penalty that any bank not coming within the provisions of the statute issuing notes intended to circulate as money should make return thereof semi-annually to the Comptroller of the Currency. The act of March 3, 1863 (12 Stat. L., 712), was the first statute imposing a tax upon the circulation of State banks. Section 7 of this act imposed a graduated tax upon the circulation of State banks in proportion to the average amount of the same, as in terms enumerated therein; it likewise provided for a similar tax upon the circulation of national banks to be assessed and collected under the national banking act.

Section 7 appears under and is a part of the act of March 3, 1863, entitled "An act to amend an act entitled 'An act to provide internal revenue to support the Government and pay interest on the public debt.'"

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The act of June 30, 1864 (13 Stat. L., 277), being an act to provide ways and means for the support of the Government, continued the tax upon the average circulation of State banks but in express terms exempted from its operation all "associations which are taxed under and by virtue of the act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," leaving the act of June 30, 1864, in so far as the imposition of a tax upon the circulation of banks is concerned, applicable only to those banks and banking associations not organized under the act of February 25, 1863. The tax imposed upon the circulation of State banks by the act of June 30, 1864, was identical with the former tax, save only as to method of payments. Observable in this connection is the fact that from and after the passage of the act of March 3, 1863 (*supra*), the imposition of taxes upon the circulation of State and national banks *per se* was no longer combined in one statute, being entirely divorced and considered by the Congress under separate and distinct titles, the imposition of taxes upon the circulation of State banks appearing under the title of internal revenue and those of national banks under the national banking act.

The act of July 13, 1866 (14 Stat. L., 136), provides for a continuation of the tax upon the average circulation of State banks, section 110 of said act being subsequently carried into the Revised Statutes as section 3408.

Section 44 of the act of June 3, 1864 (13 Stat. L., 112), provides for the conversion of State banks into national banks, and section 14 of the act of March 3, 1865 (13 Stat. L., 484), relating to the same subject, provides in terms as follows:

12 "That the capital of any State bank or banking association which has ceased, or shall cease to exist, or which has been or shall be converted into a national bank, for all the purposes of the act to which this is an amendment, shall be assumed to be the capital as it existed immediately before such bank ceased to exist or was converted as aforesaid. And whenever the outstanding circulation of any bank, association, corporation, company, or person shall be reduced to an amount not exceeding five per centum of the chartered or declared capital existing at the time the same was issued, said circulation shall be free from taxation. And whenever any State bank or banking association has been converted into a national banking association, and such national banking association has assumed the liabilities of such State bank or banking association, including the redemption of its bills, such national banking association shall be held to make the required return and payment on the circulation outstanding, so long as such circulation shall exceed five per centum of the capital before such conversion of such State bank or banking association."

Said section 14 as amended by section 9 of the act of July 13, 1866 (14 Stat. L., 146), was carried into the Revised Statutes as sections 3410 and 3411. Standing in separate sections it is misleading. The two sections should be considered as one, as in the original act, to arrive at their true meaning. The evolution of the legislation

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effecting taxes upon the circulation of State banks which we have traced clearly indicates an intention upon the part of the Congress, from and after the passage and successful operation of the national banking act, to retire State bank circulation.

Section 6 of the act of March 3, 1865 (*supra*), providing for a tax of 10 per cent. on the amount of notes of any State bank paid out by any national or State banking association after July 1, 1866, manifestly was intended as cumulative and restrictive legislation, tending to diminish the existence of State banks and encourage, if not compel, their conversion into national banks. Sections 7 and 14 of the act of March 3, 1865, reenforce the contention by offering the additional inducement of relief from taxation to all State banks converted under this act into national banks upon all their circulating medium below 5 per cent. of their charter or declared capital issued and emitted under State organization.

The Congress was dealing with State banks and State banking associations in enacting the legislation culminating in the passage of sections 3411 and 3417 of the Revised Statutes. The exceptions contained in section 3417 of the Revised Statutes manifestly were intended to cover the tax imposed upon the circulation of State banks taken over and assumed by national banks upon their conversion into a national bank and not upon the average circulation of a national bank as such.

And this is clear from section 9 of the act of July 13, 1866 (14 Stat. L., 146), carried into the Revised Statutes as sections 3410, 3411, 3412, and 3416, the latter of which sections provides, in substance, that when a national bank assumes the liabilities of a State bank such national bank is thereby required to pay the tax on the circulation of such State bank so long as it exceeds 5 per cent. of the capital before such conversion of such State bank or banking association.

Section 19 of the act of February 25, 1863 (*supra*), after providing for the procurement and control of plates and special
13 dies for the printing of national-bank notes, by the Comptroller of the Currency, expressly charges the expense thereof to the contingent fund of the Treasury Department, and for the purpose of reimbursing the Treasury Department, and "all other expenses incurred under this act, and in lieu of all taxes upon the circulation authorized by this act," imposes a semiannual tax of 2 per cent. on the amount of circulating notes received by any national bank.

Section 41 of the act of June 3, 1864 (13 Stat. L., 110), provided for the payment of the expenses incurred in administering the national banking act by the Bureau of the Comptroller of the Currency out of the proceeds of the taxes or duties assessed on the circulation of national banks. The act reduced the tax on the average circulation of a national bank to 1 per cent., payable semiannually, and, to provide for whatever deficit thereby caused, extended a small tax upon deposits and capital stock of each association—a pronounced encouragement to such associations to increase their average circulation under the provisions of the act. Section 41 of the act of June

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30, 1864, was carried into the Revised Statutes as section 5214, and the tax imposed by the act of June 3, 1864, remains the same, except as amended by section 13 of the act of March 14, 1900.

The duty imposed upon the circulation of a national bank by the act of February 25, 1863, has been decreased as to amount by succeeding Congresses, but never increased or discontinued. The act of February 25, 1863, as before observed, imposed no tax upon the circulation of State banks, their circulating medium being the only currency of the country at the time of its passage. Subsequent legislation as respects the circulation of State banks, beginning with the act of March 3, 1863, and culminating in the enactment of sections 3408 and 3412, Revised Statutes, not only continues the tax upon the circulation of the State bank issuing and emitting the same, but extends to it, and to all other banks of whatever character, a tax of ten per cent. "upon the notes of any person, or any State bank or State banking association, used for circulation and paid out by them." This later legislation, having accomplished its ultimate purpose, viz., the retirement of State-bank circulation, it became expedient to modify its harshness, as well as to encourage the organization of national banks by limiting its application to the extent of taxing only so much of the average circulation of State banks, subsequently converted into national banks, as exceeded five per cent. of its chartered or declared capital, as was done by section 3411, Revised Statutes. It is clear that sections 3411 and 3412, though applicable to separate and distinct impositions of taxes, could have no other effect than to promptly reduce State-bank circulation to the minimum exempted from taxation by the five-per cent. clause. It is difficult to perceive how extended circulation of State-bank currency could obtain under section 3412 Revised Statutes. That the legislation affecting State banks and State-bank circulation did accomplish the purpose for which it was designated is fully demonstrated by the entire absence of State-bank notes as a part of our circulating medium.

The policy of the Congress in dealing with national banks has been decidedly in favor of encouraging the issue and emission of their circulating medium. The act of March 14, 1900, permitting the issue and emission by national banking associations of
14 circulating notes equal in amount to the par value of the United States bonds deposited to secure the same, was a recognition of the public demand for increased amount of currency. The most potent criticism against the entire system of national-bank circulation has been its inability to at all times meet urgent demands for more currency. To hold that section 3411 of the Revised Statutes operated as a limitation upon the collection of a duty specifically imposed to defray the expenses of carrying into operation the national banking act, would be in direct contradiction of the intention of the Congress manifested in the enactment of the same. It would tend as an inducement to decrease circulation of national banks and thus directly defeat the result sought to be accomplished by the act of March 14, 1900 (*supra*), and all prior legislation upon the same subject.

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While the terms "tax" and "duty" have been employed in the phraseology of the statutes upon this subject, still in legal signification the amount imposed upon the average circulation of national banks by section 5214, Revised Statutes, is not a revenue measure. Mr. Justice Harlan, in Twin City Bank *v.* Nebeker (167 U. S., 203), speaking directly upon the subject, uses this language: "The main purpose that Congress had in view was to provide a national currency based upon United States bonds, and to that end it was deemed wise to impose the tax in question. The tax was a means for effectually accomplishing the great object of giving to the people a currency that would rest, primarily, upon the honor of the United States and be available in every part of the country. There was no purpose by the act or by any of its provisions to raise revenue to be applied in meeting the expenses or obligations of the Government."

Sections 3411 and 5214, Revised Statutes, are not acts in *pari materia;* they have distinct and separate applicability. One supplemented by section 3412, Revised Statutes, is part of a general legislative scheme limited by every intendment of law to the control and suppression of a currency system founded, as was said by Chief Justice Chase in Veazie Bank *v.* Fenno (*supra*), wherein the act of March 3, 1865, was under consideration on "Bank notes issued by numerous independent corporations variously organized under State legislation, of various degrees of credit and very unequal resources, administered often with great, and not unfrequently with little skill, prudence, and integrity." The other was and is a legislative imposition of a small duty, so inconsequential as not to prohibit or restrict the issue and emission of a currency proven by experience to rest upon a solvent system and to assist in part in the payment of the expenses of the bureau of the Government charged with the administration of the national banking act.

Section 5173, Revised Statutes, appropriates the sums realized from taxes imposed by section 5214 to the payment of the expenses incurred by the Comptroller of the Currency in procuring plates and dies for the printing of circulating notes of national banks. It is insisted that the Congress, having employed the general word, "Whenever the outstanding circulation of any bank," *ex vi termini* must have intended to include national as well as State banking associations within its operation.

In giving effect to a statute courts are charged with the duty of ascertaining the legislative intent. When the language employed is clear and free from ambiguity the words are to be given
15 their common and usually accepted meaning as applied to the subject-matter with regard to which they are used; but where a general word follows one or more particular and specific words of the same nature as itself its meaning is derived from them, and it is restricted to the same genus as the particular words. The principle of *ejusdem generis* applies. As before observed, sections 3410 and 3411, as they appear in the Revised Statutes, are misleading; they should be construed together as in the original enactments, wherein the subject-matter is treated in one sentence. In the revision

the one sentence is divided into sections 3410 and 3411, omitting the conjunction "and," which in the original act connects the two clauses of a single sentence. Courts are not precluded by the language of a statute, when in doubt as to the scope of the act, from going beyond it to ascertain legislative intention. The object to be accomplished by the act, keeping in view the conditions existing at the time of its passage, is of paramount importance in giving effect to statutes of doubtful meaning. Endlich on Interpretation of United States *v.* Moore, 95 U. S. 760, Statutes, sec. 86, p. 115. In Smythe *v.* Fiske (23 Wall., 380), cited in defendants' brief, the court said: "A thing may be within the letter of a statute and not within its meaning, and within its meaning but not within its letter. The intention of the lawmaker is the law. * * * Where doubt exists as to the meaning of a statute the title may be looked to for aid in its construction. The preexisting law and the reason and purpose of the new enactment are also considerations of great weight."

While courts in the construction of acts appearing in the Revised Statutes are precluded from referring to antecedent legislation upon the same subject to "create" an ambiguity, they are not so precluded to "solve" an existing one. Mr. Justice Brown in Hamilton *v.* Rathbone (175 U. S., 419) says: "The general rule is perfectly well settled that where a statute is of doubtful meaning and susceptible on its face to two constructions, the court may look into prior and contemporaneous acts, the reasons which induced the act in question, the mischiefs intended to be remedied, the extraneous circumstances, and the purpose intended to be accomplished by it, to determine its proper construction," To invoke a different rule the act when standing alone must be *fairly* susceptible of but *one* construction. Hamilton *v.* Rathbone (*supra*). To the statutes in question the latter rule can have no application.

For forty years the Treasury Department officials have construed the statutes here in question in accordance with the conclusions reached by the court in the case at bar. Such long-continued construction and practice by the Departments charged with the administration of a statute will not be set aside by the court except for cogent reasons. Courts are slow to intervene and overrule the same, unless it appears that the construction so given is clearly wrong. United States *v.* Johnson (124 U. S., 236); United States *v.* Finnell (185 U. S., 236).

We are, therefore, of the opinion that the petition should be dismissed.

Petition is dismissed.

16 V.—*Judgment of the Court.*

No. 28121.

THE MERCHANTS NATIONAL BANK OF BALTIMORE
vs.
THE UNITED STATES.

At a Court of Claims held in the City of Washington on the 3d day of December, 1906, judgment was ordered to be entered as follows:—

The Court, on due consideration of the premises, find for the defendants and do order, adjudge and decree that the petition of the claimant, The Merchants National Bank of Baltimore, be and the same is hereby dismissed.

BY THE COURT.

17 VI.—*Application for, and Allowance of, Appeal.*

No. 28121.

MERCHANTS NATIONAL BANK OF BALTIMORE
vs.
THE UNITED STATES.

From the judgment rendered in the above entitled cause on the 3rd of December, 1906, in favor of the defendants, the claimant, by its attorneys, makes application for and gives notice of appeal to the Supreme Court of the United States.

McCAMMON & HAYDEN,
Attorneys for Claimant.

Filed in open Court January 21, 1907.

Ordered:
That this appeal be allowed as prayed for.

BY THE COURT.

January 21, 1907.

18 VII.—*Certificate.*

No. 28121.

MERCHANTS NATIONAL BANK OF BALTIMORE
vs.
THE UNITED STATES.

I, John Randolph, Assistant Clerk Court of Claims, certify that the foregoing are true transcrips of the pleadings in the above-entitled case; of the findings of fact, conclusion of law and Opinion

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of the Court; of the judgment of the Court; of the application for, and allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this 4 day of February 1907.

[Seal Court of Claims.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

Endorsed on cover: File No. 20,572. Court of Claims. Term No. 607. The Merchants National Bank of Baltimore, appellant, *vs.* The United States. Filed February 14, 1907. File No. 20,572.

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[redacted].

Office Supreme Court, U. S.
FILED.
MAR 11 1907
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1906.

THE MERCHANTS' NATIONAL BANK OF BALTIMORE, *Appellant*,
vs.
THE UNITED STATES, *Appellee*.

No. [redacted].

Appeal from the Court of Claims.

MOTION TO ADVANCE.

Now comes the appellant and moves the court to advance the above entitled cause for hearing on a date in the October Term, 1907, as early as may be convenient and proper under the rules of court.

The matter involved in this case is a claim for a refund of moneys paid as taxes by the appellant to the Treasurer of the United States on its average circulation during certain semi-annual periods between July, 1887, and July, 1904, and charged to have been in excess of the amounts lawfully due.

There was no issue of fact between the parties. The determination of the question presented calls only for the interpretation of Sections 3410, 3411, 3412, 3417 and 5214 of the Revised Statutes of the United States.

Under the rulings of the Treasury Department and the judgment of the Court of Claims, from which this appeal runs, the Treasurer of the United States has been exacting and receiving, and still exacts and receives, from National Banks, in payment of taxes, sums in excess of those lawfully due, if the appellant's contention regarding the interpretation of the above named sections of the Revised Statutes be correct.

The final decision of this cause will establish a rule to govern executive action in the matter of taxation on the circulation of National Banks.

For these reasons, the appellant respectfully submits that an early hearing and decision of the cause will be but just to the many interests involved.

JAMES H. HAYDEN,
Of Counsel for Appellant.

I join in the application.

J. A. VAN ORSDEL,
Assistant Attorney-General.